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IN THE
COURT OF APPEALS OF INDIANA

LAZARO RODRIGUEZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 73A04-0711-CR-631
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE SHELBY CIRCUIT COURT
The Honorable Charles D. O'Connor, Judge
Cause No. 73C01-0609-FA-8

June 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Lazaro Rodriguez challenges his sentencing, pursuant to a plea agreement, for three counts of class A felony dealing in cocaine.

We affirm.

ISSUE

Whether Rodriguez's sentence was inappropriate.

FACTS

On September 10, 2006, Rodriguez sold eight "bindles" of cocaine, with a street value of $160, to undercover Detective Mike Polston of the Shelbyville Police Department. (Tr. 12). The transaction occurred within fifty feet of a housing complex playground. On the following day, September 11, 2006, Rodriguez delivered five more "bindles" of cocaine to Detective Polston at the same location. Yet again, on September 16, 2006, Rodriguez delivered another quantity of cocaine to Detective Polston at the same neighborhood location. At that time, Detective Polston arrested Rodriguez. A struggle ensued and Rodriguez fled the scene. On September 23, 2006, Rodriguez was apprehended on outstanding warrants. When the police confronted him, Rodriguez lied about his identity and presented false identification documents.

On September 26, 2006, the State charged Rodriguez with three counts of class A felony dealing in cocaine; one count of class B felony possession of cocaine; and one count of class D felony maintaining a common nuisance. Rodriguez's trial before the bench began on August 7, 2007. During the trial, Rodriguez decided to enter into a plea agreement with the State. Pursuant to the plea agreement, the State agreed to dismiss the

class B and D felonies in exchange for Rodriguez's plea of guilty to the three class A felonies. The State also agreed that Rodriguez's sentences could be served concurrently.

The trial court conducted Rodriguez's sentencing hearing on September 13, 2007. It found, as aggravating circumstances, Rodriguez's illegal alien status and the fact that he had dealt cocaine near a residential complex on multiple occasions during the span of less than one week. The trial court also found Rodriguez's entry into a guilty plea to be of slight mitigating weight. It imposed enhanced forty-year sentences on each of the three convictions and ordered the sentences served concurrently. Rodriguez now appeals.

DECISION

Sentencing decisions rest within the trial court's sound discretion. *Johnson v. State*, 725 N.E.2d 864, 868 (Ind. 2000). We review such decisions only for an abuse of discretion, which occurs "if the decision is clearly against the logic and effect of the facts and circumstances." *Id.* The trial court's sentencing discretion includes determining whether to increase the sentence, to impose consecutive sentences on multiple convictions, or both. *Parker v. State*, 773 N.E.2d 867, 872 (Ind. Ct. App. 2002).

Rodriguez "dispute[s] the second aggravating factor that the trial court found" – namely, that on three occasions during the course of less than one week, he dealt cocaine near a housing complex and playground. Rodriguez's Br. at 8. He does not deny dealing cocaine, but argues that because "th[e]se [crimes] occurred within a very short period of time – two (2) of then occurred on consecutive days and the third one was within one (1) week from the first two," and they are "different from three (3) separate and distinct acts

spread out over a significant period of time." Rodriguez's Br. at 8. Thus, he argues, the trial court improperly enhanced his sentence thereupon. We disagree.

Rodriguez dealt cocaine on September 10, September 11, and September 16 of 2006. Our supreme court has previously found the commission of separate and distinct acts to be a valid aggravating circumstance. *See Sanquenetti v. State*, 727 N.E.2d 437, 443 (Ind. 2000). *See also Beno v. State*, 581 N.E.2d 922, 924 (Ind. Ct. App. 1991) (finding that maximum concurrent sentences were appropriate where the defendant dealt cocaine to an undercover police informant on two occasions within the span of four days).

We do not find that Rodriguez's sentences were improperly enhanced. First, the trial court was statutorily authorized to impose a maximum sentence of fifty years for each class A felony, but instead, imposed a lesser sentence of forty years on each conviction. Moreover, although his acts of dealing cocaine were committed in the span of less than one week, one could reasonably infer from the evidence that sufficient time elapsed between each of the incidents, during which Rodriguez had opportunities to reflect upon his wrongdoing. *See Kien v. State*, 782 N.E.2d 398, 411 (Ind. Ct. App. 2003). We find no error from the trial court's consideration of the separate and distinct nature of the crimes as an aggravating circumstance.

Affirmed.[1]

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[1] Rodriguez vaguely asserts (1) that the trial court improperly weighed the aggravating and mitigating factors; and (2) that his sentence is inappropriate. We find that the former contention lacks merit, and the latter is waived for appeal.

NAJAM, J., and BROWN, J., concur.

Rodriguez's argument that the trial court's finding of the second aggravating circumstance did "not lend itself to an increased sentence of ten (10) years above the old presumptive sentence," essentially amounts to a claim that the trial court assessed excessive weight to one of the aggravating factors. Rodriguez's Br. at 8. He argues,

> [t]he trial court should have found one (1) aggravating and one (1) mitigating factor. Even allowing the finding of the second aggravating factor, it would not lend itself to an increased sentence of ten (10) years above the old presumptive sentence. This should have led the trial court to a sentence in the range of the advisory sentence of thirty (30) years. For the trial court to aggravate Rodriguez' [sic] sentence by ten (10) years based upon the aggravators it found, was an abuse of its discretion.

Rodriguez's Br. at 8. We disagree. Our supreme court has held that "trial court[s] no longer ha[ve] any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, [thus,] a trial court cannot now be said to have abused its discretion in failing to 'properly weigh' such factors." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007).

As the *Anglemyer* court further noted, however, "This does not mean . . . that criminal defendants have no recourse in challenging sentences they believe are excessive." *Id*. at 491. Indiana Appellate Rule 7(B) allows a reviewing court to revise a sentence if the sentence is inappropriate in light of the nature of the offense and the character of the offender. "Although Rule 7(B) does not require this court to be extremely deferential to a trial court's sentencing decision, this court still gives due consideration to that decision." *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also recognize the unique perspective that a trial court brings to its sentencing decisions. *Id*. In addition, a defendant bears the burden of persuading the appellate court that his sentence is inappropriate. *Id*.

Rodriguez has not met his burden. He neither cites Appellate Rule 7(B) nor advances any argument "that the rule and its interpretive case law require a revision of his sentence." State's Br. at 8. By his failure to develop or provide cogent argument specific to the appropriateness of his sentences for dealing in cocaine, Rodriguez has waived this claim for appeal. *See* Ind. Appellate Rule 46(A)(8).